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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,151

01/11/2006

Kazuhiro Obae

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EXAMINER

KASSA, TIGABU

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

09/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/564,151</p>	<p>Applicant(s) OBAE ET AL.</p>	
	<p>Examiner TIGABU KASSA</p>	<p>Art Unit 1619</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 13-15 and 24.
Claim(s) withdrawn from consideration: 1-6 and 16-19.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Cherie M. Woodward/
Primary Examiner, Art Unit 1647

Continuation of 3 (a-c) and 11: Continuation of 3 (a-c) and 11: Applicant's proposed claim amendments do not place the case in condition for allowance or in better condition for appeal.

Claim 13 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, for the reasons of record and the reasons set forth herein.

Applicant argues that the Office Action is incomplete because other relevant parts of the Specification were not taken into consideration. The phrase "in a pressure less than atmospheric pressure" is further supported by Examples 2-6. In these examples, the pressure is reduced to 600 mmHg (0.79 atm) just before the starch raw material is heat treated. Examples 2-6 describe that the potato starch is packed in a stainless steel vat and then the pressure is reduced. The examples provide the "point of reference," which the Examiner argues is missing. That is, the examples clearly convey that the potato starch is packed in the vat at atmospheric pressure. Accordingly, any reduction in the pressure results in a pressure less than atmospheric pressure.

Applicant's arguments filed on 08/11/2010 have been fully considered but they are not persuasive. The point of reference that applicant delineated above is a single point reference which is narrower in scope with what applicant recited in the claim "in a pressure less than atmospheric pressure". One of ordinary skill in the art would consider this phrase to encompass any pressure which is less than atmospheric pressure. The examiner suggests to applicant that if the reduced pressure is 600 mmHg applicant should make the claim amendment to that specific reference point. Applicant is also reminded that any amendments must be fully supported by the specification as originally filed.

Claims 13-15 and 24 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Baensch et al. (US Patent 5759581) as evidenced by Kesselmans et al. (US Patent No. 6822091), for the reasons of record and the reasons set forth herein.

Applicant's amendments of claim 13 reciting "10% or more of all functional starch powder particles observable in the field of vision at a magnification of 600 are starch particles comprises starch particles with a particle size of 50 to 500 um" is new matter. Applicant's claim amendment does not have support in the original disclosure for this recitation. The support applicant's cited (paragraph 0061) does not provide support for the above recitation. Paragraph 0061 recites "As to the shape of starch particles constituting the functional starch powder of the invention, the starch particles have more preferable characteristic in that they have a structure formed by indenting a sphere or an oval in one or more parts thereof. As to the particle size of the starch particles constituting the functional starch powder of the invention, the functional starch powder preferably includes starch particles having a particle size in the range of 50 to 500 um, preferably 50 to 300 um, more preferably 50 to 100 um, when observed by SEM (scanning electron microscope) at a magnification of 200 to 1500. As to the content of such starch particles having a structure formed by indenting a sphere or an oval in one or more parts thereof, the functional starch powder preferably contains such starch particles so that for example, when it is observed at a magnification of 600, the proportion (% by the number of particles) of such starch particles to all particles observable in the field of vision may be 5% or more, preferably 10% or more. The content (% by the number of particles) measured by such observation is considered as the content (% by weight) based on the weight of all the starch particles."

Applicant's arguments filed on 08/11/2010 have been fully considered but they are not persuasive. The 10% or more amount disclosed in the original specification is with regard to the amount of particles that have indenting in spherical or oval shape it is not a recitation disclosing that 10% or more of the starch particles when observed at magnification of 600 using scanning electron microscopy have a size of 50 to 500 um. As a matter of fact the particle size description is clearly addressed in the sentences set forth above the section dealing with the shape of the particles which recites that "As to the particle size of the starch particles constituting the functional starch powder of the invention, the functional starch powder preferably includes starch particles having a particle size in the range of 50 to 500 um, preferably 50 to 300 um, more preferably 50 to 100 um, when observed by SEM (scanning electron microscope) at a magnification of 200 to 1500."

The amendments would result in overcoming the rejections under 35 USC § 103 (a) if the amendments were entered but the rejections are maintained because the examiner will be required to further search and consider in order to formulate a new set of rejections for example a new matter rejection under 35 USC § 112 first paragraph and others based on the new claim amendment. Therefore, due to the reason set forth above the amendment cannot be entered.